

June 17, 1772.

A N S W E R S

F O R

WILLIAM GRAHAM, Esq; and others, Petitioners ;

T O T H E

MEMORIAL of THOMAS DUNDAS of Fingask, Esq; Respondent, produced by him to the Justices of Peace of Stirling-shire, the 10th curt.

THE police of the country has been always an object of the legislator's attention, and particularly the preservation and improvement of the roads of communication, which is committed to the Justices of Peace and Commissioners of Supply, as they are, from their connection in the country, specially interested to have them kept in repair. Of late years the roads in the Kerse of Bothkennar and neighbourhood, especially those leading to Carron-shore and Falkirk have been greatly broke, owing to the concourse of travellers thereon, occasioned by the increase of trade at Carron-harbour, the establishments at Carron-works and Falkirk, which will be farther increased, when the communication on the great canal is opened.

The petitioners, before proceeding to state any answers to the respondent's memorial, beg leave to observe, that Mr. Dundas's conduct, in printing and dispersing a case partial and imperfect, was unprecedented, entirely calculated to impress the justices and the public with an unfavourable opinion of the

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petitioners

petitioners' plea ; and it is only from the known character of the gentlemen to whom these cases were sent, that the petitioners are satisfied such procedure can be attended with no bad consequences.

In order to put this question in a clear point of view to the justices and the public, the petitioners have been advised to make out the following answers to Mr. Dundas's memorial, and to subjoin a plan of the roads in dispute, also a copy of said memorial, so as from the perusal of both, it will be easily determined how far the petitioners and the public are interested in the present dispute, and with what justice Mr. Dundas has endeavoured to make it believed that the petitioners want to deprive him of any part of his property.

From the plan it will be observed, from Airth, Dunmore, &c. there are two roads to Falkirk, one by Crookland-gate, and from thence by a line delineated ' the Crosshill-muirhead road.' The other road leading in a straight line from Crookland-gate by Longdike to Mr. Dundas's barn, and from thence to Carron-shore, which is the one in dispute, and will appear at first view to be the straightest and most convenient for all the inhabitants that have occasion to travel from Airth, Dunmore-harbour, Kersey-ferry, Higginfneuck-ferry, and places adjacent, to Falkirk, Carron-shore, Carron-works, or other places in these directions. There is also a communication of loans from Airth and other places foresaid, by Bell's dyke, which are impassable for eight months in the year, and these loans are what Mr. Dundas calls the great road by Bell's dike, and are also delineated on the plan.

Mr. Dundas allows, that from the north the road by Longdike the length of his barn, is a public road, and that the south part of the road from Carron-shore, north to what is delineated on the plan ' Bothkennar road,' is also a public highway ; so that the whole dispute is confined to the single question, Whether the intermediate space from Mr. Dundas's barn south to the Bothkennar road, and which is distinguished in the plan by a green line, is a public or private road?

The petitioners say, that this space, as well as the whole of the other parts of the roads of communication betwixt Airth, &c. and Carron-harbour, is a public highway, and hope to convince the justices and the impartial public, that they maintain this assertion on the clearest right, and shall therefore shortly state the proofs



proofs they have to adduce in support of their plea, and answer the memorial.

The first nine pages of the memorial contain a recital of what Mr. Dundas calls positive evidence of his exclusive right to the piece road in dispute.—The petitioners have already in process fully shown, that the writings produced for the defender do not apply to the road in question ; that the roads therein mentioned are not specially described ; that Mr. Dundas has other roads to which they properly apply, (if they can prove any thing in his favours) especially that his rights state these private roads as lying in Larbert parish, and the one in question is in the parish of Bothkennar, which shows it cannot be one of those alluded to in his papers : That at the date of these papers, no coal was carried by the road in dispute, as none of the workings of the coal at that time communicate therewith ; that the public or the petitioners cannot be prejudged by any private transactions betwixt the proprietors of Quarrole and their feuars and tacksmen, or by any decrees of their baron-baillie conceived in the language most agreeable to their constituents. But supposing, for argument's sake, these answers were not sufficient to exclude these pretended writs, yet the petitioners are entitled by the law of their country to plead, that forty years possession of a road as a patent high-road, entitles the public to continue the possession thereof, whatever right any person may pretend thereto as his private property, and that such right is lost by the negative prescription *de non utendo* ; and the petitioners have all along offered to establish, that the road in question has been a patent high-road these forty years, and of which they hope, in the course of these answers, to satisfy the justices. As the respondent has in the tenth and eleventh pages of his memorial stated an objection against the Carron-company's appearance as parties, and indeed against most of the petitioners, they beg leave to say a few words in answer thereto, before coming to the point in debate, with which they think these objections totally unconnected.

The petitioners, or any other person whatever, are intitled to complain of any incroachment on what belongs to the public. Highways are no person's property ; every individual in the kingdom has an interest therein, and right to complain of any incroachment thereon : It matters not therefore, whether this
petition

petition for repairing a high-road be in name of a company, or private person, or by gentlemen for themselves, or as factors for others; in any view, they, as members of society, are interested therein, and have right to make the application.

The Carron-company have a lease of the respondent's private roads (if he has any) and waggon-way, but this cannot prevent their applying to have a public road repaired: neither can the submission mentioned in this objection, because that was entered into several years ago, before the defender took up the conceit of pretending a right to this road; and therefore, as it was no dispute existing at the date of the submission, it could not be comprehended therein. The Carron-company could not in any case prevent Mr. Gascoigne as proprietor of the estates of Dalderse, Abbotshaugh, and Westertoun, joining in an application to have a road leading from the frith of Forth directly to all his estates, kept in repair.

The state, in the memorial, of what happened at the meeting of heritors at Bothkennar-kirk, near the bottom of the 10th page, is below Mr. Gascoigne's notice, and merits no other answer, than that it is untruth to say he gave the least reason to think he, or the company, had altered their sentiments of adhering to the application.

The objection stated to the competency of the court is justly repelled, and therefore nothing need be said in answer thereto.

The principal points in the memorial are contained in the 13th page thereof, and which the petitioners shall particularly answer, and endeavour to show from evidence adduced by the defender himself, that this road is a public road.

The first thing they shall mention on this head, is a process betwixt Robert Gillespie and other shipmasters at Quarrole-shore, and Mr. Campbell of Abbotshaugh, *anno* 1756, wherein the shipmasters, under the direction of the defender, proved, that the trade of Quarrole-shore had been increasing ever since the year 1740: Thus Edward Gillespie, a witness for the pursuer, depones, 'That there was no great trade in victual at Quarrole-shore till the year 1740.' John M'Leith depones, 'the victual
' trade was carried on at Quarrole-shore preceding the year
' 1740, and about the year 1755 and 1756 he has observed ten,
' twelve, or fifteen vessels at Carron-harbour at once; That
' Mr. Dundas built a granary at Quarrole-shore in the year
' 1750.'

' 1750.' When the defender was so early anxious to establish Quarrole-shore a place of importance, it cannot be conceived, that it should have no communication with the northern parts of the parish, or the parish of Airth, where there are several public ferries ; and much less can the communication be cut off, when the trade is so much increased, that there is now from 30 to 40,000 ton of goods, load and unload, at Carron-shore, in a year.

The petitioners will next beg leave to observe, that in the year 1756, Mr. Dundas applied to the justices of peace, by petition, representing, that the road leading from Carron, south of Stenhouse, to the northwards, was very inconvenient, and therefore craving the same might be altered ; on which a committee was appointed to inspect the road mentioned in the petition and report, and they reported accordingly, in the words stated in the memorial, page 13th. From this report the justices will observe, that the old road leading below the house of Quarrole, from the gardener's house, by James Wilson's, colliers houses, &c. marked on the plan, ' old road shut up,' was condemned, and now makes a part of Mr. Dundas's inclosures, and that a new road was made by John Burden's cottar-houses to Quarrole, Nethermiln, and from thence till it meet the coal-road to Quarrole-shore, and there it terminates. This coal-road is the road in dispute, and if it is not a public road, the country is deprived of a road altogether ; because, the old road was condemned by the justices, and the new one, substituted in its place, terminates on a private road that the public can have no use of, which can never be understood, as by law the justices cannot shut up a road till a new one be opened in the same direction, and not above 200 ells about, as was determined by the Court of Session, *Duke of Roxburgh contra Ker*. Was the defender to be maintained in his plea, the people who behoved to have passed on the old road, and since it was shut up, have travelled by the road in dispute, have no access to the westward at all ; for instance, those of the families of David Hardy, Widow Sclanders, and those living the whole way from Mr. Dundas's barn to Crooklandgate, coming to Carron they must go north to Crooklandgate, from thence by Stenhouse, Carron-works, and so to Carron-shore, or round the Bells-dyke-loan, which is a circuit of several miles, instead of going straight down the road in dispute to Carron-shore, not

as many hundred yards as the other is miles, and so of the people residing at Airth, &c. Further, Mr. Dundas admits the road from the north, the length of his barn, to be a public road. The petitioners will ask, What use can there be for a county road to Mr. Dundas's barns if it go no farther? It will not be said the public are to maintain a road to his office-houses, for the justices will observe, the road called the *Long-loan*, that struck off at his barn, and led to the kirk of Bothkennar, was shut up by Messrs. Monro and Forrester's decret-arbitral aftermentioned: It is indeed said, that in order to get the people to the eastward of the kirk, not to join in this application, the defender has promised to open up the Long-loan road; but suppose that was done, the consequence would be, the county would have to maintain a road from his barn down the Long-loan to the kirk of Bothkennar, and from thence to Carron-shore, instead of going down to Carron-shore, by the road libelled, which will be a saving of upwards of a mile to travellers, and little less of road to keep in repair; and even in that case, the public could not be deprived of the road in question.

The defender has endeavoured to persuade the justices, that was this road declared a county-road he would be thereby a great sufferer, not only in terms of his contract with the proprietors of Kinnaird; but also as he has set it to Carron company, both which allegances are without foundation; from the rights he produces, the groats are payable by the proprietor of Kinnaird for the liberty of shipping their coal at his shore, and the Carron-company do not pay for the road in question: They have a waggon-way along the side thereof, for which they pay; and to accommodate them in this waggon-way, the defender took down part of his inclosures, and took a part of the waggon-way off his grounds that were inclosed, and built his dike farther north, no doubt sensible he could not use the public road for that purpose: It will not be believed if the road in question had been his private property, he would have broke down his inclosures, and given the company a part thereof for a waggon-way, when he could have used this road for that purpose. This particular is put beyond dispute by a petition presented to the justices by the Carron-company and Mr. Dundas, 26th November 1766, and is as follows: 'Unto the justices of peace of the county of Stirling, the petition of Messrs. Roebucks,

‘ Roebucks, Garbett, and Caddells, the Carron-company, with
 ‘ consent and concurrence of Thomas Dundas, Esq; of Fingask,
 ‘ humbly sheweth, That by contract entered into in the year
 ‘ 1763, betwixt the petitioners and the said Thomas Dundas,
 ‘ he gave to the Carron-company the privilege of making, and
 ‘ let to them the use of a waggon-road, betwixt the coal-pits
 ‘ and Kinnaird coal to the harbour of Carron, through the
 ‘ grounds of Quarrole and Skaithmuir, and those lands in the
 ‘ parish of Bothkennar belonging to him, adjoining to each
 ‘ side of the coal road :’ The petition then sets forth, that the
 Company were going to make said waggon-way ; but that it
 would be necessary to carry it across the high-road in a diago-
 nal line, and therefore craving the justices authority to carry
 the same across said high-road, which the justices granted: This
 petition, and procedure thereon, is narrated in the decret at
 Mr. Dundas and Carron-company’s instance against Mr. Callen-
 der, lodged with the clerk, pages 7, 8, 9. and shows clearly
 what are the subjects the Carron company pay for. But what
 is conclusive is, that this road, claimed by the defender as his
 private property, runs through part of the petitioner’s, Mr. Gas-
 coigne’s, estate of Westertoun, and to which the defender has
 no title ; the lands of Westertoun never belonged to the pro-
 prietors of Quarrole, and so this road could not be compre-
 hended under the rights produced by him.

The next particular that occurs in support of the petitioner’s
 plea is, that *anno* 1764, John Callender, then of Westertoun,
 applied to the Court of Session for a suspension of some opera-
 tions the defender was performing on this very road in que-
 stion. In the suspension, Mr. Callender sets furth, ‘ That the
 ‘ road leading northward from Quarrole-shore by the house of
 ‘ Quarrole, and from thence north to Airth, and other places
 ‘ thereabouts, is, and always has been, past memory of man,
 ‘ a patent public high-road, used by the whole country,’ &c.
 The list was appointed to be intimate, which was done accord-
 ingly, and Mr. Dundas gave in answers thereto ; wherein he
 says, he is able to shew instantly, in the clearest manner, that
 this road is not a public high-road, but a private road made by
 his predecessors ; and then he goes on and states the same wri-
 tings founded on and narrated in his memorial : However, the
 Lords past the suspension, and there the matter rested ; a print-
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ed copy of the bill of suspension, and attested copy of the answers, are herewith lodged in the clerk's hands. This matter lay over till the year 1767, that Mr. Callender was again under necessity of applying to the Court of Session for a list against Mr. Dundas's proceeding to make some *novum opus* on said road, under pretext of the justices warrant on Carron-company, and his petition above noticed : In which suspension Mr. Callender complains, that Mr. Dundas took up the suspension in 1764, but never returned it. In answer to which allegances, Mr. Dundas admits, ' That the suspension had been past and expedite, ' and adds, But that suspension which is produced relates plainly to the property of the road, which in this part of it is now ' determined in favours of the public.' And in this process of suspension in the year 1767, the Court of Session found Mr. Dundas and Carron-company bound to keep in repair the high-road, so far as the waggon-way crosses the same, during their continuing to use said waggon-way : And on inspection the justices will observe, that said waggon road crosses the road in question at the north and south ends of the disputed space, and also in the middle thereof ; which, in terms of the Lords remit, Mr. Dundas and Carron-company are bound to repair themselves. From which writs the petitioners contend, that as Mr. Callender complained to the Court of Session against Mr. Dundas for making any alterations in the road from Quarrole-shore northward by Quarrole-house to Airth ; and that Mr. Dundas in answer thereto said, it was his private property, and produced the writs now founded upon ; and that, notwithstanding thereof, the Lords past the suspension, which is yet undiscussed ; and that, by the decret above-mentioned, Mr. Dundas and Carron-company are bound to maintain said high-road in repair, where the waggon-way crosses the same ; they are intitled to possess said road under authority of the Court of Session's judgment passing said suspension, ay and till Mr. Dundas insist thereon, and when he does he will meet with a proper answer.

The petitioners apprehend, that the evidences above deduced are so convincing, that they would of themselves be conclusive in the cause. But, in order to show the world that their demand is just, they will now proceed to state the evidences of several witnesses examined in the process at Mr. Dundas's instance against John Callender, before the sheriff of Stirling, *anno* 1762 ; but first
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beg leave to notice, that said process was about a quite distinct separate road, only the one libelled is so public a high-way, that a dispute even about a kirk-road, as that was, could not be discussed without this one being interwoven with it, so much connection has the other roads in the parish with it.

In the year 1762, Mr. Dundas attempted to establish a road on Mr. Callender's grounds of Westertoun, from Quarrole-shore to Bothkennar kirk: Mr. Callender perceiving his intention, erected a bar across the same, of which Mr. Dundas complained to the sheriff of Stirling, and in that process a proof was allowed to both parties, and a number of witnesses on the possession the country had of the road then in dispute; in which also the road now in question is mentioned. The petitioners will take the liberty of transcribing that part of their depositions relating to the road now under consideration: Mr. Dundas's proof was examined at Stirling 30th July 1762.

John Rae, aged 59 years, and lived in the parish all his days, deponed, page 4. ' That the high-road from Quarrole-shore to Airth, passes or leads betwixt the pursuer's house of Quarrole and some of his office-houses there.' Page 6th, depones, ' That the people who travel by the high-road from Quarrole to Airth, have no occasion to go by the kirk of Bothkennar: Depones, That since the road from the Long-loan road was shut up, passing by Mr. Dundas's house, people travelling to the westward from Airth and Bothkennar parishes are obliged to go by Quarrole-shore: That he has seen the Long-loan repaired, and has seen Mr. Dundas present, when the parishioners were repairing from Quarrole-shore to Quarrole-bridge.' (This is the road now in question.)

Alexander Primrose, aged 52 years and upwards, depones, page 21. of the Proof, mentioning different places to the north and east of Quarrole-shore and Bothkennar kirk, ' That he knows no other road from Quarrole-shore, except that by Quarrole-bridge down the Long-loan, which is a great way about; and which Long-loan begins at Orchardhead, and goes to Quarrole-bridge, and from that south to Quarrole-shore,' (the road now in question.) Page 24. depones, ' There is an open patent road betwixt Airth and Quarrole-shore, which leads to Falkirk. Depones, That when people at Quarrole-shore, and the seven families on the south and west of the kirk,

‘ go to the eastern parts of the parish and Dalbeth ferry or
 ‘ Carron with horses and carriages, they have no other road
 ‘ than the one libelled, (by Westertoun) except they go by
 ‘ Quarrole-shore, and north by Quarrole-bridge down the Long-
 ‘ loan.’ (The road north to Quarrole-bridge is the one presently
 disputed.)

Thomas Monteath, aged 58, page 28. depones, ‘ That when
 ‘ people went to the kirk from Quarrole-shore, they behoved,
 ‘ if on horseback, to go either by Westertoun, or north by the
 ‘ old coal-gate to Quarrole-bridge and down the Long-loan :’
 Page 33. ‘ That seven and thirty years before he left Cold-
 ‘ kitchen, he has seen malt laid on horsebacks at Skaithmuir
 ‘ mill to be carried to the kirk of Bothkennar and Newtown ;
 ‘ and the horses and loads went *down by Quarrole-shore* : That the
 ‘ high-road to Skaithmuir mill as well as the west country, was
 ‘ by Mr. Dundas’s house to Crofshill-muirhead till it was shut
 ‘ up.’

John Mitchell, aged 58. page 37. depones, ‘ He has seen
 ‘ malt grind at Skaithmuir mill carried on horseback from thence
 ‘ by Quarrole-shore, and from thence to the eastward by West-
 ‘ ertoun.’

It is evident, that the malt mentioned in these two deposi-
 tions behoved to be carried on the old road now shut up, the
 length of where the present road passes Mr. Dundas’s house ;
 and then instead of going north to Quarrole-bridge and down
 the Long-loan, they went south by the road claimed to Quarrole-
 shore.

James Rae, aged 58, page 50. depones, ‘ That since Mr.
 ‘ Dundas shut up the old road, the people in Bothkennar and
 ‘ its neighbourhood, who used to go up the road by Quarrole
 ‘ park-dykes now shut up, are obliged either to go by Wester-
 ‘ toun road, or up the Long-loan to *Quarrole bridge, and from thence*
 ‘ *to Quarrole-shore* ; and the road by Quarrole-bridge to Quarrole-
 ‘ shore is a piece farther about than the road libelled for those
 ‘ who go by Westertoun.’

Such is the proof adduced by the defender himself in that
 process with Mr. Callender ; whereby, in endeavouring to fix a
 road upon Mr. Callender’s ground by Westertoun, he has clearly
 established the road from Quarrole-bridge to Quarrole-shore, (the
 present disputed one) to be a public road.

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The proof adduced by Mr. Callender in said process is also very satisfactory.

Michael Elphinston collector of cess, page 6. depones, ' That the people living on the east of Quarrole-shore, if they had come to Quarrole-shore, behoved either to have come the old coal-road or the new one by Quarrole with horses, as he never knew nor heard of any other road.'

Sir James Dunbar, page 10. being interrogate relative to a communing betwixt Mr. Higgins and Mr. Dundas, for compromising that process, viz. making a new road from the one in question at Mr. Dundas's gardener's house to the westward; and being interrogate if James Crawford was then satisfied, and if Mr. Dundas made no objection, but led the deponent and the company farther south upon the road to Quarrole-shore, opposite to Mr. Callendar's house, &c. depones affirmative thereon.

The petitioners plead from this, that the question being stated, if Mr. Dundas led them farther south upon the road from his gardener's house to Quarrole-shore, and Sir James deponing affirmative thereon, is the same thing as if he had deponed affirmative to that being the road from Quarrole-shore by the defender's gardener's house; and that Mr. Dundas being present, and stating no objections against any part of that road as being his private property, was an acknowledgment that the same belonged to the public.

Sir Michael Bruce depones, ' When he made the application *anno* 1756, along with Mr. Dundas, for opening the road from Stenhouse-ford to Quarrole-shore, he had no such thought or view as shutting up the road leading by Quarrole-house.'

Thomas Forrester of Denovan, describing the roads in the parish, page 18. depones, ' That the people in Bothkennar had no road to go westward but the road passing by Quarrole-orchard, and John Smith's house, unless they came up the length of Quarrole-orchard, and then came to Quarrole-shore, and then went up to Skaithmuir by the new road.'—He also agrees with Sir James Dunbar in deponing, That, when Mr. Higgins proposed a new road for compromising that difference, Mr. Dundas led them south on the road presently under consideration; and the observation on that part of Sir James's oath applies also to Mr. Forrester's.

Alexander Watt, page 39. depones, ' That some little time after

‘ after signing the petition mentioned in his deposition, when
 ‘ he the deponent and some others were working on the road be-
 ‘ tween Quarrole-bridge and Quarrole-shore, Mr. Dundas’s gardener
 ‘ desired them to desist from the petition craving the old road
 ‘ might be opened, as Mr. Dundas would not allow the road
 ‘ by Quarrole to be repaired; and that it would soon go un-
 ‘ passable, so that they could not travel on it:’ Page 40. ‘ That
 ‘ the west road from Liddell’s and Banny’s house goes by the
 ‘ Landside Tree-loan to the old coal-gate, which is the road be-
 ‘ twixt Quarrole-bridge and Quarrole-shore.’

Thomas Simpson, page 43. depones, ‘ That they’ (that is, the
 people he is deponing about) ‘ travelled in summer-time the road
 ‘ from Quarrole-bridge to Quarrole-shore.’

From these evidences produced in a process, entirely uncon-
 nected with the present dispute, it is obvious that the road claim-
 ed has been always used as a public patent road, and admitted
 as such by the defender himself to Sir James Dunbar, Mr. Foref-
 ter, and others; and the petitioners apprehend it would be in-
 decent to insist for further proof of a point so clearly established,
 especially since the justices, by taking a view of the road, will see
 the propriety of the petitioners demand. And the petitioners
 can further appeal to the personal knowledge of the justices and
 gentlemen in the neighbourhood, and particularly to Sir Michael
 Bruce, and Sir James Dunbar, that it consists with their know-
 ledge, that the road in dispute is a public road.

The defender has asserted, that there never was any statute-
 work performed on this road. The contrary is proved by John
 Rae and Alexander Watt; but the petitioners are able to give
 a good reason for this under the defender’s own hand. The a-
 bove process betwixt him and Mr. Callender was submitted to
 Mr. Forrester and Mr. Munro, in a memorial signed by the de-
 fender, and lodged with them. He offers to prove, ‘ That no
 ‘ road in the parish of Bothkennar was repaired till about 30
 ‘ years ago by the statute-work, and that the same was only by Mr.
 ‘ Little and the late Westertoun, and that they begun by repairing
 ‘ them to their own houses: But that even in these 30 years, the
 ‘ parish of Bothkennar were more ordinarily carried out of the
 ‘ parish, and performed the statute-work at Crookland gate and
 ‘ hill of Airth.’ Here is full evidence under his own hand, that
 the statute-work, till lately, was applied to none of the public
 roads

roads in the parish, and surely he will not be allowed to say, after this acknowledgement, that it is no road, because it has not been repaired these 40 years by the statute-work. But it is already mentioned, that the witnesses have sworn to the repairing of it. And the petitioners condescend further, that the road has been repaired under the direction of Alexander Watt, Thomas Simpson, David Hardie, and John Johnston, overseers appointed by the justices to repair the public roads in the parish, and who will be attending at the meeting to satisfy the justices as to this particular. The petitioners shall further observe, that the Long-loan leading down from Quarrole-barns to Bothkennarkirk, which was always admitted to be a public highway, is by the decret-arbitral, pronounced by Messrs. Forrester and Munro, declared to be Mr. Dundas's private property, and shut up accordingly; so that if the road in dispute is not a public one, there is no communication betwixt Airth, Dunmore, &c. and Carron-shore; in which event, the justices have power to open a new road; but that is not necessary, as the one in question is proved so clearly to be a public road: And, to adopt the words of the memorial, *after such a profusion of evidence, it is left with every impartial person to determine what foundation or pretence there can be for the objection made by Mr. Dundas.*

The plan hereto annexed is drawn by Mr. Dundas's own surveyor, and must therefore be considered, at least, as no way unfavourable; and the measurer is ready to depone thereon.

What is pled in the memorial, page 17th, from the petition, of Mr. Graham, &c. praying for a repair on the road by Kinaird and Lethem, as that was the only road from Airth, Dunmore, &c. cannot avail him, because the road in question was at that time in such disrepair as could not be called a road; it was some short time after that repaired; and just now there would be on impropriety, to say in a petition, there is at present no proper road at all from these places to Carron-shore or Carron-harbour, as that is the fact: But surely, though the roads are so bad as not to be proper ones, it could be no reason for saying the petitioners should have no road at all; on the contrary, it ought to stimulate the justices to get them repaired. Neither can the defender argue any thing in his favour from Mr. Bruce's letter, copied page 17th of the memorial. It is true, that the road therein described, is the only proper road at this day from Fal-

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kirk to Kinnaird, and then proceeding to Airth, &c. as it is not reasonable to say people living at Kinnaird would come by Carron-shore to their houses: But though Mr. Bruce says, that was the only proper road to Kinnaird, and that it led also to Airth, &c. he does not say, nor did he mean, (so far as appears from the letter), that there was no road from Falkirk to Airth, &c. by Carron-shore. And here it may be necessary to observe, that the defender wants to confine the words of the petition to very narrow bounds, as he always mentions the road in dispute as if it led only to Falkirk; and thereby endeavours to mislead the justices from the great object in view, viz. a communication with Carron-shore. It is trifling to say, that because the petition terminates the road at Falkirk, that the complainers cannot be allowed to insist for it as a road to Carron shore; there is no argument in his pleadings on this point that merits an answer.

On the whole, the petitioners hope they have shown, to the conviction of every gentleman, that the road in question is a necessary road, and has been used as a public road, and possessed by the public, as such, time sufficient for establishing their right thereto; and that they are in possession thereof, even in virtue of a judgment of the Court of Session; that Mr. Dundas has admitted to Sir James Dunbar, and Mr. Forrester, that it was a public road; that the loss he will sustain, should it be declared a public road, is imaginary; and that from his and the Carron-company's own showing, it is not for the road in question, but for a waggon-way, or his private property, they pay him an annual sum: And, finally, That his allowing the road on the south and north sides to be public roads, without any termination than on the road in question, is sufficient to declare it a public road, especially that it is the only one left in place of a public road shut up by his house, when the new road from Stenhouse-ford to Carron-shore was opened up: And on all or other of the proofs above stated, that the justices will declare it a public road, and order the repairs sought by the petition.

JOHN CAMPBELL,
Agent for the Petitioners.



